

1 DARRYL SHIOZAWA
2 c/o 125 S San Tomas Quino Rd.
3 Campbell, CA 95008-2565
4 Telephone: (408) 378-6956

E-filing

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Filed

JUN 29 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

8 UNITED STATES DISTRICT COURT
9

10 NORTHERN DISTRICT OF CALIFORNIA
11 ✓

12 DARRYL SHIOZAWA,
13

14 Plaintiff / Petitioner,

15 v.

16 United States of America, et al.,
17

18 Defendant / Respondent.

CV12-03416 HRL

19 PETITION TO QUASH THIRD
20 PARTY INTERNAL REVENUE
21 SERVICE SUMMONS.

22 Petitioner, DARRYL SHIOZAWA, hereby petitions this court to quash the
23 third party record keeper collection summons, issued to Wells Fargo Bank, by
24 the Internal Revenue Service.

25 I

26 JURISDICTION

27 1. This court has jurisdiction in this action pursuant to the provisions of Ti-
28 tle 26 U.S.C. Sections 7609(b)(2)(A), 7609(h), and Title 28 U.S.C. Sections
1331 and 1340, venue is proper in that the petitioner and respondents all re-
side or are found within the geographical jurisdiction of this Court.

II

PARTIES

2. Petitioner Darryl Shiozawa is a Citizen of the State of California.
3. Respondent United States of America, Internal Revenue Service (hereinafter "IRS"), is a federal government entity with agencies and offices throughout the United States, and more specifically with an Internal Revenue Service Office located at 55 South Market Street, San Jose, California from which this action has arisen.

4. Respondent, *or party of interest* is Wells Fargo Bank is a Commercial Banking Corporation, and financial institution, with offices in a number of locations within and without the Northern District of California.

III

5. On or about June 6, 2012 Revenue Agent Howard Baldwin issued two third party summons to Wells Fargo Bank, a copy of which was mailed to Wells Fargo Bank. (copy of summons attached hereto exhibits 1 and 2, and made a part hereof by reference thereto).

6. The collection summons directed to respondent Wells Fargo Bank requests documentation that is again unrelated to petitioner and pertains to "*In the matter of Shiro Shiozawa aka Shiro's Auto Body*". There are no assessments against this petitioner, and this petitioner is unaware of any assessments involving the collection summons.

7. It appears on the face of the collection summons that the summons is issued "In the matter of "Shiro Shiozawa aka Shiro's Auto Body". The apparent

1 purpose for the documentation sought in the summons is therefore not dis-
2 closed upon the face of the summons.

3 8. The Internal Revenue Service must at all times use the summons authority
4 in good-faith pursuit of a congressionally authorized purpose. The IRS has the
5 burden of showing in an adversarial proceeding that its investigation is pursu-
6 ant to a legitimate purpose, and that the information sought is relevant and ma-
7 terial to this legitimate purpose. Good faith is not presumed where the sum-
8 mons power is used to harass or to pressure the individual.

9 9. This petition is based on Darryl's contention that Revenue Agent Howard
10 Baldwin is using the summons power to harass and pressure Darryl, for rea-
11 sons unknown to Darryl at this time, and for purposes that are wholly illegiti-
12 mate to the spirit and intent of the law, noting that no law or other authority
13 was cited as the ostensible authority for issuance of the Summons.

14 10. The IRS in general and Revenue Agent Howard Baldwin specifically are
15 aware that there is no legal basis of any kind that would support the issuance of
16 a summons as evidence by the complete absence of any citation to any legiti-
17 mate basis for the issuance of summons on its face.

18 11. Intervention can be brought by Darryl who is NOT originally a party to
19 Shiro or Shiro's Body Shop per IRC 7609(b)(1) because he IS NOT THE
20 NOTICEE OR SUBJECT IDENTIFIED IN THE HEADING OF THE SUM-
21 MONS (also reference Internal Revenue Manual 25.5.6.3.8 [10-04-2006]).

22 12. There is NO EXCEPTION PRESENT involving petitioner Darryl from
23 notification of the service of some other administrative summons served upon
24 party Wells Fargo Bank per IRC 7609(a) supported by Internal Revenue Man-
25 ual 25.5.6.1 [10-04-2006]).

1 13. At all times to this PETITION, DARRYL SHIOZAWA WAS AND HAS
2 BEEN ENTITLED TO NOTICE OF THE ADMINISTRATIVE SUMMONS
3 THAT HE IS ENTITLED TO, BUT RESPONDENT AND HIS LACKY
4 REVENUE AGENT VIOLATED THE LAW OF THIS CASE BY NOT
5 SERVING A COPY OF THE ADMINISTRATIVE SUMMONS UPON HIM
6 AS REQUIRED BY LAW.
7

8 Therefore, the data summons is not relevant to any legitimate purpose.
9

10 **WHEREFORE**, in consideration of the foregoing, petitioner prays that this
11 court order the respondents to appear before this honorable court and show
12 cause as to why this court should not quash the summons here involved that is
13 related in same to content as that found in current case number C 12-01028
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15 PSG.
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17 Respectfully submitted this 19th day of June, 2012.

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Darryl Shiozawa, Petitioner

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EXHIBIT 1



Summons

In the matter of Shiro Shiozawa aka Shiro's Auto Body, 125 S. San Tomas Aquino Road, Campbell, Ca. 95008

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 27

Periods: January 01, 2008 thru December 31, 2008; January 01, 2011 thru September 30, 2001

The Commissioner of Internal Revenue

To: Wells Fargo Bank

At: Subpoena Processing East, PO Box 8667 Y1372-110, Philadelphia, PA 19101

You are hereby summoned and required to appear before HOWARD BALDWIN, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

- (1) Copies of all signature cards relative to the account, open and closed, of Darryl Shiozawa, routing number 122105278; account number:000000480933692, for the period January 01, 2008 thru December 31, 2011
- (2) Copies of all bank statements relative to the account, open or closed, of Darryl Shiozawa, routing number 122105278; account number: 000000480933692, for the period January 01, 2008 thru December 31, 2011
- (3) Copies of all checks (front and back) over \$500 issued by Darryl Shiozawa, routing number 122105278; account number: 000000480933692 for each month for the period January 01, 2008 thru December 31, 2011
- (4) Copies of all signature cards relative to the account, open and closed, of Darryl Shiozawa, routing number 121042882; account number: 6324076725, for the period January 01, 2008 thru December 31, 2011
- (5) Copies of all bank statements relative to the account, open or closed, of Darryl Shiozawa, routing number 121042882; account number: 6324076725, for the period January 01, 2008 thru December 31, 2011
- (6) Copies of all checks (front and back) over \$500 issued by Darryl Shiozawa, routing number 121042882; account number: 6324076725 each month for the period January 01, 2008 thru December 31, 2011

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

55 S MARKET STREET HQ5115, SAN JOSE, CA 95113- (408)817-6453

Place and time for appearance at: 55 S MARKET STREET HQ5115, SAN JOSE, CA 95113-



on the 6th day of July, 2012 at 10:00 o'clock A m.

Issued under authority of the Internal Revenue Code this 6th day of June, 2012

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039(Rev. 10-2010)
Catalog Number 21405J

HOWARD BALDWIN

Signature of Issuing Officer

REVENUE OFFICER

Title

Signature of Approving Officer (if applicable)

Title

Part C -- to be given to noticee

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EXHIBIT 2



Summons

In the matter of Shiro Shiozawa aka Shiro's Auto Body, 125 S. San Tomas Aquino Road, Campbell, Ca. 95008
 Internal Revenue Service (Division): Small Business / Self Employed
 Industry/Area (name or number): Small Business / Self Employed - Area 27
 Periods: January 01, 2008 thru December 31, 2011

The Commissioner of Internal Revenue

To: Wells Fargo Bank
 At: Subpoena Processing East, PO Box 8667 Y1372-110, Philadelphia, PA 19101

You are hereby summoned and required to appear before HOWARD BALDWIN, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

- (1) Copies of all signature cards relative to all accounts, open or closed, but not including account number: 6324076725, of Darryl Shiozawa: 554-53-2904, for the period January 01, 2008 thru December 31, 2011
- (2) Copies of all bank statements relative to all accounts, open or closed, but not including account number: 6324076725, of Darryl Shiozawa: 554-53-2904, for the period January 01, 2008 thru December 31, 2011
- (3) Copies of checks (front and back) over \$500, but not including account number: 6324076725, issued by Darryl Shiozawa: 554-53-2904, for the period January 01, 2008 thru December 31, 2011
- (4) Copies of all Fedwire records and wire transfer transactions, open or closed, but not including account number: 6324076725, of Darryl Shiozawa: 554-23-2904, for the period January 01, 2008 thru December 31, 2011

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

55 S MARKET STREET HQ5115, SAN JOSE, CA 95113- (408)817-6453

Place and time for appearance at: 55 S MARKET STREET HQ5115, SAN JOSE, CA 95113-



on the 6th day of July, 2012 at 11:00 o'clock A.m.

Issued under authority of the Internal Revenue Code this 6th day of June, 2012

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039(Rev. 10-2010)
Catalog Number 21405J

HOWARD BALDWIN

Signature of Issuing Officer

REVENUE OFFICER

Title

Signature of Approving Officer (*if applicable*)

Title

Part C -- to be given to noticee